

§ 668.153 Administration of tests for students whose native language is not English or for persons with disabilities.

Except as provided in § 668.143—

(a) *Students whose native language is not English.* For a student whose native language is not English and who is not fluent in English, the institution shall use the following tests, as applicable:

(1) If the student is enrolled in a program conducted entirely in his or her native language, the student must take a test approved under §§ 668.146 and 668.148(a)(2), or 668.149(b).

(2) If the student is enrolled in a program that is taught in English with an ESL component, and the student is enrolled in that program and the ESL component, the student must take either an ESL test approved under § 668.148(b), or a test in the student's native language approved under §§ 668.146, 668.148 or 668.149.

(3) If the student is enrolled in a program that is taught in English without an ESL component, or the student does not enroll in the ESL component if the institution offers such a component, the student must take a test in English approved under § 668.146.

(4) If the student enrolls in an ESL program, the student must take an ESL test approved under § 668.148(b); and

(b) *Persons with disabilities.* (1) An institution shall use a test described in § 668.148(a)(3) or 668.149(a) for a student with a documented impairment who has neither a high school diploma nor its equivalent and who is applying for Title IV, HEA program funds.

(2) The test must reflect the student's skills and general learned abilities rather than reflect the student's impairment.

(3) The institution shall document that a student is disabled and unable to be evaluated by the use of a conventional test from the list of tests approved by the Secretary.

(4) Documentation of a student's impairment may be satisfied by—

(i) A written determination, including a diagnosis and recommended testing accommodations, by a licensed psychologist or medical physician; or

(ii) A record of such a determination by an elementary or secondary school

or a vocational rehabilitation agency, including a diagnosis and recommended testing accommodations.

(Approved by the Office of Management and Budget under control number 1840-0627)

(Authority: U.S.C. 1091(d))

[60 FR 61843, Dec. 1, 1995, as amended at 61 FR 31035, June 19, 1996]

§ 668.154 Institutional accountability.

An institution shall be liable for the Title IV, HEA program funds disbursed to a student whose eligibility is determined under this subpart only if the institution—

(a) Used a test administrator who was not independent of the institution at the time the test was given;

(b) Compromises the testing process in any way; or

(c) Is unable to document that the student received a passing score on an approved test.

(Authority: U.S.C. 1091(d))

§ 668.155 Transitional rule for the 1996-97 award year.

(a) Notwithstanding any other provision of this part, an institution may continue to base an eligibility determination under section 484(d) of the HEA for a student on a test that was an approved test as of June 30, 1996, and the passing score on that test, until 60 days after the Secretary publishes in the FEDERAL REGISTER the name of an approved test and the passing score on that test that is appropriate for that student.

(b) If an institution properly based a student's eligibility determination for purposes of section 484(d) of the HEA on a test and passing score that was in effect on June 30, 1996, the institution does not have to redetermine the student's eligibility based upon a test and passing score that was approved under §§ 668.143 through 668.149.

(Authority: U.S.C. 1091(d))

§ 668.156 Approved State process.

(a)(1) A State that wishes the Secretary to consider its State process as an alternative to achieving a passing score on an approved, independently administered test for the purpose of determining a student's eligibility for